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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/829,894	04/10/2001	Robert Barriz	P/1318-127	8555

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OSTROLENK FABER GERB & SOFFEN
1180 AVENUE OF THE AMERICAS
NEW YORK, NY 100368403

EXAMINER


RHODE JR, ROBERT E

ART UNIT PAPER NUMBER

3625

DATE MAILED: 08/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/829,894	Applicant(s) BARRITZ, ROBERT	
	Examiner Rob Rhode	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 April 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Applicant amendment of 7-13-04 amended claim 1 as well as traversed rejections of Claims 1 - 13.

Currently, claims 1- 13 are pending.

Drawings

The drawings filed on 04/10/2001 are acceptable subject to correction of the informalities indicated on the attached "Notice of Draftperson's Patent Drawing Review," PTO-948. In order to avoid abandonment of this application, correction is required in reply to the Office action. The correction will not be held in abeyance.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Storefrontpro.com web pages captured via the WayBackMachine (archie.org) [hereafter referred to as "Storefront"] in view of Conklin (US 6,332,135 B1).

Regarding claim 1, Storefront teaches a website constructor, comprising: a website organization subsystem that defines a look and feel of the website (see at least Pages 1 and 2); a graphic design subsystem that creates at least one website layout and features setup (see at least Page 2 and 5); and a website builder that builds the website based on the criteria and conditions that have been setup by the foregoing subsystems (see at least Pages 1 – 7).

However, Storefront does not specifically disclose and teach a selection criteria subsystem that establishes a selection criteria for merchandise selection; a merchandise selection subsystem in the website constructor that selects merchandise that matches the selection criteria at least semi-automatically, the merchandise selection subsystem being based on merchandise made available by a plurality of vendors; a merchandise information downloading subsystem that downloads substantially automatically, from a plurality of vendors of merchandise, merchandise information defining the merchandise that has been selected by the merchandise selection subsystem.

On the other hand and in the same area of website constructor's, Conklin teaches a selection criteria subsystem that establishes a selection criteria for merchandise selection; a merchandise selection subsystem in the website constructor that selects merchandise that matches the selection criteria at least semi-automatically, the

merchandise selection subsystem being based on merchandise made available by a plurality of vendors (see at least Col 19, lines 6 – 19 and Col 20, lines 1 – 14); a merchandise information downloading subsystem that downloads substantially automatically, from a plurality of vendors of merchandise, merchandise information defining the merchandise that has been selected by the merchandise selection subsystem (see at least Abstract and Col 32, lines 15 - 20).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the constructor of Storefront with a selection criteria subsystem and a merchandise selection subsystem of Conklin to have enabled a website constructor, comprising: a selection criteria subsystem that establishes a selection criteria for merchandise selection; a website organization subsystem that defines a look and feel of the website; a graphic design subsystem that creates at least one website layout and features setup; a merchandise selection subsystem in the web site constructor that selects merchandise that matches the selection criteria at least semi-automatically, the merchandise selection subsystem being based on merchandise made available by a plurality of vendors; a merchandise information downloading subsystem that downloads substantially automatically, from a plurality of vendors of merchandise, merchandise information defining the merchandise that has been selected by the merchandise selection subsystem; and a website builder that builds the website based on the criteria and conditions that have been setup by the foregoing subsystems – in order to provide a capability for reduced time by online merchants in maintaining and updating their site.

Storefront discloses a website constructor, comprising: a website organization subsystem that defines a look and feel of the website; a graphic design subsystem that creates at least one website layout and features setup; and a website builder that builds the website based on the criteria and conditions that have been setup by the foregoing subsystems (Pages 1 – 9). Conklin discloses a website constructor with a selection criteria subsystem that establishes a selection criteria for merchandise selection; a merchandise selection subsystem in the website constructor that selects merchandise that matches the selection criteria at least semi-automatically, the merchandise selection subsystem being based on merchandise made available by a plurality of vendors; a merchandise information downloading subsystem that downloads substantially automatically, from a plurality of vendors of merchandise, merchandise information defining the merchandise that has been selected by the merchandise selection subsystem (Abstract and Col 32, lines 15 - 20). Therefore, one of ordinary skill in the art would have been motivated to extend the website constructor of Storefront with a website constructor that would have included a selection criteria subsystem that establishes a selection criteria for merchandise selection; a merchandise selection subsystem in the website constructor that selects merchandise that matches the selection criteria at least semi-automatically, the merchandise selection subsystem being based on merchandise made available by a plurality of vendors; a merchandise information downloading subsystem that downloads substantially automatically, from a plurality of vendors of merchandise, merchandise information defining the merchandise that has been selected by the merchandise

selection subsystem. In this manner, the satisfaction of current users of the site/capabilities will increase due to the relative ease of constructing and updating their online sites, which will increase the probability that they will recommend the solution to others.

Regarding claims 2 and 3, Storefront teaches wherein the system is operable semi-automatically (Pages 1, 2 and 8) and in which the website is optimized for a retail operation (Page 1).

Regarding claim 4, Storefront teaches the website constructor, in which merchandise information comprises at least two of the following merchandise parameters that are selected from the group consisting of: product code, UPC code, SKU code, product description, retail price, product style, product color, product size, product ordering information, product incentive program, product image, and product tags (Pages 1, 2 and 4).

Regarding claim 5, Conklin teaches a website constructor, in which the merchandise information is provided in Extensible Markup Languages (XML) [see at least Abstract and Col 20, line 37].

Regarding claim 6, Conklin teaches in which the selection criteria comprises at least two parameters selected from the parameter group consisting of: category; subcategory;

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manufacturer; vendor; promotions; close-out; starting date and ending date of seasonal merchandise (Col 2, lines 60 -67 and Col 12, lines 43 - 36).

Regarding claim 7, Storefront teaches a website constructor, in which the website organization subsystem defines the look and feel of the website by reference to one or more organization parameters selected from the parameter group consisting of: category; manufacturer; promotions; close-out; product appearance; and tags representing the begin and end dates for the placement of merchandise on the website (Pages 4, 5, 8 and 9).

Regarding claim 8, Conklin teaches in which the merchandise selection subsystem enables a user of the website constructor to control downloading of merchandise information in a manner which enables: acceptance or rejection of marketing or merchandise information based on the selection criteria; selection of purchase orders, pricing schedules, and delivery schedules; and specification of loading information (Col 11, lines 7 – 22).

Regarding claim 9, Conklin teaches a website constructor in which the website builder enables periodical rebuilding of the website (Col 20, lines 13 -14).

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Regarding claim 10, Conklin teaches a website constructor, which a website builder enables building of the website based on the detection of changed condition (Col 20, lines 13 – 14).

Regarding claim 11, the recitation that “in which the changed condition comprises a changed date”, such recitation is given little patentable weight because it imparts no structural or functional specificity which serves to patentably distinguish the instant invention from the other “condition” already disclosed by Conklin.

Regarding claims 12 and 13, the recitations that “in which the changed condition comprises the changing of the merchandise information by a vendor” and “in which the changed condition constitutes a manual intervention by a user of the website, such recitations are given little patentable weight because it imparts no structural or functional specificity which serves to patentably distinguish the instant invention from the other “condition” already disclosed by Conklin.

Response to Arguments

Applicant's arguments with respect to claims 1 - 13 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

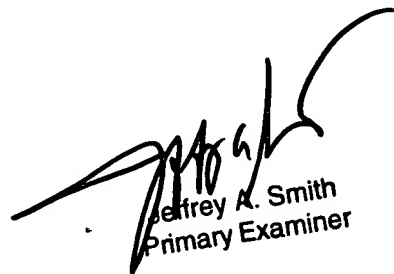
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rob Rhode whose telephone number is 703.305.8230. The examiner can normally be reached on M-F 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703.308.1344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RER



Jeffrey A. Smith
Primary Examiner